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Nos. 58 and 59

In the Supreme Court of the United States

OCTOBER TERM, 1946

GENERAL LELAND S. HOBBS, POST COMMANDING OFFICER, FORT DIX, NEW JERSEY, PETITIONER

v.

UNITED STATES EX REL. HARRY HOROWITZ

GENERAL LELAND S. HOBBS, POST COMMANDING OFFICER, FORT DIX, NEW JERSEY, PETITIONER

v.

UNITED STATES EX REL. JACOB S. SAMUELS

ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT

BRIEF FOR THE PETITIONER

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OPINION BELOW

The opinion of the Circuit Court of Appeals for the Third Circuit (No. 58, R. 47–48; No. 59, R. 67–68) is reported at 151 F. 2d 801. The findings of fact and conclusions of law in the *Horowitz* case, No. 58, appear at R. 37–39. The opin-

ion of the district court in the *Samuels* case, No. 59, appears at R. 55–58.

JURISDICTION

The judgments of the Circuit Court of Appeals were entered November 15, 1945 (No. 58, R. 51; No. 59, R. 68). On February 12, 1946, Mr. Justice Burton extended the time for filing a petition for writs of certiorari for thirty days from February 15, 1946 (No. 58, R. 51; No. 59, R. 69). The petition for writs of certiorari was filed on March 13, 1946, and granted on May 27, 1946 (No. 58, R. 52; No. 59, R. 70). The jurisdiction of this Court rests upon Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTION PRESENTED

Whether, in each case, it was proper for the local board to reopen the registrant's classification and to consider the advisory recommendation of a panel on theological classifications, and whether it was thereafter proper for the boards of appeal to consider these recommendations together with all the other evidence in respondents' selective service files in classifying them.

STATUTE AND REGULATIONS INVOLVED

The pertinent provisions of the Selective Training and Service Act are set forth in Appendix A, *infra*, pp. 48–53. The Selective Service Regulations, in pertinent part, are set forth in Appendix B, *infra*, pp. 54–66.

STATEMENT

Each respondent registered under the Selective Training and Service Act and thereafter claimed exemption from military service as a bona fide student in a recognized theological school preparing himself to be a rabbi in the Jewish religion. Their claims were ultimately rejected and each was classified I–A and inducted into the Army. Shortly thereafter separate petitions for writs of habeas corpus were filed on their behalf in the United States District Court for the District of New Jersey seeking their release from military custody on the ground that their local boards had arbitrarily and capriciously denied them classification in IV–D as students preparing for the ministry (No. 58, R. 3–7; No. 59, R. 2–4). Petitioner's predecessor[1] filed a return (No. 58, R. 8; No. 59, R. 5) in each case and hearings were had in which the selective service file of each respondent was received in evidence (No. 58, R. 14–15; No. 59, R. 5, 17). Thereafter the court found against respondents and ordered the writs of habeas corpus dismissed (No. 58, R. 37–39; No. 59, R. 55–59).

Each respondent took an appeal to the Circuit Court of Appeals for the Third Circuit and that court reversed the judgments of the district court and ordered respondents released from military

[1] Petitioner was duly substituted for the officer who preceded him in command of Fort Dix (Journal, U. S. Sup. Ct., October Term, 1945, p. 255, Nos. 947 and 948).

custody. Relying on *United States ex rel. Levy v. Cain*, 149 F. 2d 338 (C. C. A. 2), the court below held, in a single *per curiam* opinion, that it was improper for the selective service boards to consider the statements and recommendations of the advisory panel on theological questions established by the Selective Service System to the effect that respondents were not bona fide students preparing for the ministry.

The pertinent facts relating to respondents' selective service classifications, as revealed by their respective selective service files, which are before the Court as original exhibits, may be summarized as follows:

Horowitz.—Respondent registered under the Act and in January 1941 filed his questionnaire and an accompanying statement in which he said that he was a student at the College of the City of New York preparing for a career as a psychiatric social worker,[2] and that if he was selected for induction he desired his induction to be postponed until the close of the 1941 academic year. In this statement he said, in part:

> * * * My request is that you defer my drafting until February, 1943. At that time I will have been graduated from college. I will have been able to save enough money for graduate work and some to spare to tide me over after my year of

[2] The college authorities advised the local board that Horowitz was in "substantially full time attendance" at the college.

service. I would have had time to become a known cantor who could spare a year's absence. And when I returned, I would be able to seek employment in my field with a bachelor's degree in my pocket—employment which I could not expect without the diploma. In other words if you take me now, you practically negate my possibilities to attain the position I seek in life, namely, a psychiatric social worker.

* * * * *

As a dejected person, I could be of little value to an army, but as a grateful person two years later, I would come willingly with blessings on my lips and in my heart for the justice which had been meted out to me.

* * * * *

On May 10, 1941, Horowitz was physically examined and found qualified for general military service. Less than two weeks later the local board was advised that Horowitz had been enrolled in the Rabbinical Seminary of America, a school listed by the Selective Service System as a theological school which has been recognized as such for more than one year prior to September 16, 1940, for the scholastic term beginning in September 1941.

On July 1, 1941, the academic year at City College having ended, Horowitz was classified I–A, and on his appeal to the board of appeal he was again classified I–A on August 25, 1941. In the meantime he had claimed classification as a student preparing for the ministry, and he

undertook to supply the local board with additional evidence to support this claim. In an affidavit dated July 16, 1941, Horowitz stated, *inter alia*, that before May 1941, he "had not disclosed my intention to become a rabbi because I had no concrete facts to present; I had merely hopes." On November 2, 1941, Horowitz was classified IV–D by the local board, and he retained this classification until May 1944.[3]

In April 1944, the Director of Selective Service for New York City undertook a review of Horowitz' selective service file[4] and in the course of that review Horowitz was requested to appear be-

[3] On June 12, 1942, relator filed his Selective Service Occupational Questionnaire in which he stated that he was taking a course in rabbinical studies at the Rabbinical Seminary of America, which he expected to complete in 1947 or 1948; and that he was taking a course in Bachelor of Social Science at the College of the City of New York which he expected to complete in June 1944. Relator stated that the job for which he was best fitted was Group Worker for Children, and that he had four years experience in such work. Under "duties of job for which you are best fitted" he stated: "I have supervised as a volunteer worker children's clubs and have served as a leader of an individual club as well as director of all." Under "job for which you are next best fitted" he stated "None." He stated that his present job was that of student and under Professional and Scientific Workers he listed himself as a Social worker.

[4] As we show below, *infra*, pp. 23–25, the Director is authorized by the Selective Service Regulations to require a local board to reopen a classification and he is authorized to take an appeal from a local board classification. Evidently, the Director undertook a review of Horowitz' file to determine whether to take either of these steps.

fore the advisory panel on theological classifications (see *infra*, pp. 23–30). A hearing was had before the panel on May 2, 1944, at which Horowitz furnished additional evidence and full inquiry was made into his claim that he was a bona fide student preparing for the ministry. A transcript of this hearing was made and was sent to the local board on May 10, 1944. The letter transmitting the transcript, signed by the Chief, Legal Division, New York City Headquarters, advised the local board that:

> There is returned herewith the cover sheet and file of the above named registrant submitted to this Headquarters for administrative review.
>
> On May 2nd the registrant appeared before the appropriate division of our advisory panel on theological classifications, composed of eminent clergymen and laymen. After reviewing the file and examining the registrant, and upon consideration of all the circumstances, the panel voted to recommend that registrant's status does not warrant his classification in Class IV–D. A transcript of the evidence taken at the hearing is enclosed herewith.
>
> It is requested, therefore, that the Local Board reopen and reconsider the registrant's classification of Dec. 2nd, 1943 in the light of the additional evidence presented and advise this Headquarters of the action taken in the matter.

> Of course, while the Local Board should give careful consideration to the recommendation of the advisory panel, formal determination of the registrant's classification must rest with the Board itself or the appropriate appeal agency.

Shortly thereafter there was also forwarded to the local board a statement for the record, dated May 2, 1944, which had been prepared by the advisory panel. The local board was directed that "The statement should be added to the registrant's file and considered together with the other information of record in determining the registrant's classification." The panel's statement contained a general discussion of educational practices in the field of Jewish education and it spelled out the considerations which the panel regarded as significant in considering Horowitz' claim, as follows:

> Registrant's claim for exemption is predicated upon his status as a student of the Rabbinical Seminary of America. That institution is one of several talmudical academies in this area offering courses based upon intensive study of the talmudical tractates, commentaries and codes. While these courses embrace the subject matter upon which candidates for traditional rabbinic certification are examined, students taking such courses are not necessarily preparing for the ministry.

Orthodox tradition has always encouraged advanced study of talmudic literature, both privately and at academies instituted for that purpose, irrespective of the specific occupational objective of those engaged in such study, and all courses offered by these academies are open to qualified students without regard to the individual student's specific intention to prepare for a career of service in the rabbinate.

Thus, a student ultimately intending to enter business or a profession, or some non-rabbinic activity in the field of religion, may be enrolled in the same courses attended by other students who are specifically concerned with preparation for the rabbinate. It is, therefore, essential for purposes of Selective Service classification to determine in each individual case the purpose which the registrant has in mind in pursuing his course of study.

* * * * *

Accordingly, this panel is of the opinion that proper evaluation of the registrant's status must take into consideration the character of the institution he is attending and the relevant circumstances present on the record and disclosed at the examination before this panel. Furthermore, in seeking to assess the sincerity of the registrant's declared purpose, due weight must be given to the registrant's manner of answering questions, his demeanor, presence or absence of inadequately explained inconsistencies in his statements, and in

general, the total impression accruing relevant to registrant's candor, trustworthiness and integrity.

In the present case the registrant described himself in his questionnaire (subscribed January 24, 1941) as a teacher, cantor and student preparing for psychiatric social work. In the four page statement filed with his questionnaire, registrant gives no indication whatever that he plans to prepare for the ministry, but on the contrary, refers in very emphatic terms to his "looking forward to making a success of my career—a career dedicated to social service." He also refers to his anxiety that "I will lose all my contacts which are so necessary to make me a successful cantor" and to the fear that "if you take me now, you practically negate my possibilities to attain the position I seek in life, namely, a psychiatric social worker." In subsequent statements submitted to the local board and in his examination before this panel, registrant represents that he is a student preparing for the orthodox rabbinate, that he had decided on that career as early as 1939, and that for some four years prior to that date he had planned to prepare for a career in the conservative rabbinate.

In view of his declared aspirations as of January, 1941, and the many inconsistencies in his explanation of the reasons for the omission at that time of any reference to his ministerial ambitions, and the rather

> indifferent and unsystematic manner in which he sought to prepare himself for his subsequently professed objective, this panel is not convinced that his formal entry upon a course of study in the Rabbinical Seminary of America in September, 1941, and his continued attendance at that institution since that date was prompted by a sincere intention to prepare for a career in the rabbinate. On the contrary, an analysis of the history of his case taken together with an appraisal of the registrant's reliability and candor, as disclosed by our examination, impels the conclusion that registrant's attendance at the seminary has been motivated by the desire to secure a basis for exemption from training and service under the Selective Service law.

Pursuant to the request of the city director's office the local board reopened Horowitz' classification, considered the new information, and on May 11, 1944, classified him I–A. He was thereafter, at his request, given a hearing before the local board. As a result of the hearing the local board referred Horowitz's selective service file to Rabbi Henry A. Schorr, who formerly had been chairman of another local board in New York City, for another advisory recommendation. Rabbi Schorr recommended that Horowitz be classified IV–D (see also, No. 58, R. 15–21) and the local board did so on June 1, 1944.

On August 10, 1944, the local board held a hearing concerning Horowitz' case "to refresh

our records and inquire into your present status," and as a result, Horowitz was again classified I–A. He thereafter requested and was accorded another hearing before the local board at which he submitted additional documentary evidence in support of his claim to a IV–D classification. The board considered the new evidence, but concluded that it did not merit a change in classification. Horowitz appealed to the board of appeal, which on November 14, 1944, classified him I–A by a vote of 5 to 0. On two occasions thereafter Horowitz requested the local board to reopen his classification and he submitted additional evidence in support of his claim. The local board examined the new evidence, but on both occasions it concluded that the additional evidence did not warrant reopening the classification.

On February 12, 1945, New York City Headquarters wrote to the appeal board as follows:[6]

> On November 14, 1944, your Board classified the above named registrant in Class I–A by a vote of 5–0, and the registrant is now scheduled to report for induction on February 15th.
>
> The file in this case contains a communication from this Headquarters, dated May 10, 1944, reporting to the Local Board the recommendation of our Advisory Panel on Theological Classifications, after hear-

[6] A similar letter was sent to the local board.

ing in the matter, that registrant's status does not warrant a IV–D classification.

For your information, it is stated that the following members of the Advisory Panel were present at the hearing in this case and joined in the recommendation:

Hon. Jonah J. Goldstein, Judge of the Court of General Sessions in New York County; Member of the Board of Directors of the Jewish Education Committee; Trustee at large of the Federation of Jewish Charities; and formerly a member of the Administrative Committee of the Zionist Organization of America.

Hon. William S. Evans, Justice of the City Court of the City of New York; Member of the Jewish Education Committee; Member of the B'Nai Brith; and Member of Federation for Support of Jewish Philanthropic Societies.

Hon. E. Ivan Rubenstein, Justice of the Supreme Court of the State of New York; Member of the United Synagogue of America; Past President and Member of the Board of Trustees of Temple Beth El, Manhattan Beach; and Member of the Continuing Conference of the Jewish Theological Seminary of America.

While none of the panel's rabbinical members were present at the hearing in question, this Headquarters is of the opinion that the members who attended were fully qualified to pass upon the issues presented.

> However, if the Board of Appeal, or any member thereof, considers the information with regard to the identity of the panel members voting in the present case as warranting reconsideration of the registrant's classification by your Board, it is requested that this Headquarters be advised accordingly, in order that appropriate administrative action may be taken at this time to secure such reconsideration.

Both the local board and the appeal board advised City Headquarters that there was no occasion for reopening the classification. The board of appeal, which had finally classified Horowitz, stated that the board had considered the information concerning the panel's membership and that "we have once again unanimously agreed that the registrant's status does not warrant a IV–D classification."

Respondent was inducted into the armed forces on February 15, 1945.

Samuels.—This respondent registered with local board No. 193, Brooklyn, New York, on February 16, 1942, and on July 23, 1942, he filed his selective service questionnaire. In that document he stated that he was 21 years of age and that he had had two years of high school education; that he was a student at the Mesifta Theological Seminary, preparing for the rabbinate; and that since 1940 his regular occupation was that of "general clerk" in a store. In an occupational questionnaire, Samuels stated that he was employed by

the Eden Textile Company and that for the past two years his duties were to "receive, ship, check, stock, and sell cotton goods." He also stated in that document that the job for which he was best fitted was that of a "Hebrew school teacher and spiritual leader."

In response to an inquiry from the local board, the registrar of the Mesifta Theological Seminary advised the board that Samuels "entered our Rabbinical Division in September 1937 and will probably graduate in 1945"; "Mr. Samuels has been attending our school system since the age of six. He graduated from our 8 year elementary course and from our 4 year pre-rabbinical course. Upon his completion of the latter division he was admitted to our Rabbinical division in September 1937. After having attended for two years he left the school in June 1939 to seek employment.[6] In September 1941 he returned to our evening division and in July 1942[7] he was transferred to the day session." On August 29, 1942, Samuels was classified IV-D.

In May 1944, Samuels was given a physical examination and was found acceptable for gen-

[6] More than two years later, at a time when Samuels' classification was under consideration, the registrar of the Seminary advised the local board that he had been mistaken in stating that Samuels left school in 1939 "to seek employment"; that, instead, he left school because of ill health.

[7] It was in July 1942, that Samuels received his selective service questionnaire from the local board.

eral military service. Thereafter, the director undertook a review of respondent's selective service file and he requested respondent to appear before the Advisory Panel of Theological Classifications in respect to his claim to classification as a student preparing for the ministry. Samuels appeared before the panel on June 21, 1944. The stenographic transcript of the hearing shows that Samuels stated to the panel, *inter alia,* that he expected to graduate from the seminary in 1945; that he left school in October 1939 because of ill health, but that in January 1940 he took a job as a stock clerk; that he worked in this capacity until July 1942; that at that time he returned to the school as a full-time student, even though the school's summer vacation period started on July 15; and that he became a full-time student at about the time he filed his selective service questionnaire.

The Theological Panel prepared a "Statement for the Record," as in the *Horowitz* case, in which it concluded that Samuels was not "preparing in good faith for a career of service in the practicing rabbinate." The director requested the local board to reopen the classification and he forwarded to the local board the transcript of the testimony at the hearing, together with the Panel's statement and recommendation, with the admonition that, "while the Local Board should give careful consideration to the recommendation of the advisory panel, the

responsibility of determining the registrant's classification must rest with the Local Board itself, or the appropriate agency of appeal."

The local board reopened the classification and reclassified Samuels from IV-D to I-A on August 22, 1944. He thereafter submitted additional evidence and requested a hearing before the local board, which he had on September 26, 1944. He had a second hearing on October 4, 1944, at which he submitted more evidence in support of his claim. The stenographic transcript of the second local board hearing reveals that Samuels claimed that the transcript of the hearing before the theological panel was inaccurate; that the local board permitted him to correct the alleged inaccuracies; and that at the conclusion of the hearing the local board advised him that "the Board will give your case every consideration and we are not bound by the questions put to you by the Panel. We are considering the facts as they are now before us and will consider also the deposition submitted to us by the Panel together with the additional information you have given us." On October 5, 1944, the local board ordered that Samuels be continued in I-A, and on his appeal to his board of appeal, he was again classified I-A.[8]

[8] On the appeal, there was included in Samuels' file his "Statement on Appeal," in which he summarized his reasons for urging the board of appeal to upset the classification given him by his local board.

A few days after the decision of the board of appeal, Samuels filed additional supporting documents with the local board and requested that his classification be reopened. The associate government appeal agent thereupon examined Samuels' file, including the newly submitted evidence, and he advised the local board that "I fail to find anything in the record that would justify reopening of the case or disturbing the I–A classification." The local board again held a hearing on Samuels' claim, at which he was present. At the hearing, Samuels was advised that the additional evidence which he had submitted was merely corroborative and did not of itself justify reopening the classification. One of the members of the local board stated to Samuels that he had investigated his claim that the theological panel had acted hastily and that he had learned that the members of the panel "are qualified men, well versed in the field that the registrant was being interviewed about." Samuels advised the local board that of his own volition he had appeared before a committee (not connected with the selective service system) representing the Union of Orthodox Rabbis and that the committee concluded that he was a student preparing in good faith for the ministry.[9] One member of the local board noted for the file that he was not persuaded by Samuels' evidence and

[9] It does not appear whether the committee had before it the same facts as were before the selective service boards and the theological panel.

that "registrant's demeanor was not favorable." On November 14, 1944, the request to reopen the classification was denied, and on December 9 Samuels was ordered to report for induction on December 20, 1944. His subsequent request for a six months' deferment was denied, and he was inducted into the Army on December 26, 1944.

SPECIFICATION OF ERRORS TO BE URGED

The circuit court of appeals erred:

1. In holding that "the interjection of the statement and recommendation of the 'advisory panel' into the proceedings of the local boards vitiated those proceedings and rendered the relators' reclassification and induction invalid."

2. In reversing the judgments of the district court and ordering respondents discharged from military custody.

SUMMARY OF ARGUMENT

The mere fact that respondents' boards of appeal, which made their final classifications, considered the recommendations of the Advisory Panel on Theological Classifications furnishes no basis for judicially invalidating respondents' selective service classifications. The advisory panel performs the same function in the field of theological classifications which the Department of Justice, acting pursuant to Section 5 (g) of the Selective Training and Service Act, performs in the field of conscientious objector classifications. In both instances a hearing is had, at which the

registrant appears and furnishes information concerning the basis of his claim for exemption from military service. In both cases a recommendation for or against exemption from service is furnished the classifying board together with a statement revealing the facts relied upon by the advisory agency and the reasons for the recommendation. And in both situations the classifying board is plainly informed that the recommendation is advisory only and that the board is not bound by it. By providing in Section 5 (g) for the advisory recommendation of the Department of Justice in conscientious objector cases Congress made plain the fact that a classifying board does not abdicate its statutory function by merely considering an advisory recommendation as to whether a registrant should be exempted from military service. In our view, there is no significant distinction between the practice in the conscientious objector cases and the practice in New York City in theological classification cases. Accordingly, we think that the court below misconceived the congressional will when it held that respondents' classifications were void because the classifying boards abdicated their statutory duty by considering the recommendations of the Advisory Panel on Theological Classifications.

The consideration of advisory recommendations by draft boards is not a novel practice. It existed during World War I and was widespread during World War II and the period of mobiliza-

tion which preceded actual hostilities. Rather than prejudicing the registrant, the theological panel affords a real protection to him. For, by virtue of its special competence, the panel is capable of protecting the interests of a registrant having a legitimate claim for exemption, and at the same time it is peculiarly well qualified to detect an unfounded claim to exemption which appears valid to persons not familiar with the religious group with which the registrant is affiliated.

Respondents' argument that they would have been better able to challenge the competence of the panel if informed of the identity of its members who participated in their cases, furnishes no basis for voiding otherwise valid selective service classifications. Each respondent appeared before the panel. If they desired to know the names of the persons before whom they were appearing, they need only have asked. There is no showing that respondents were refused such information or even that they wanted to challenge the competence of the panel, assuming such a challenge might be made. As was held in *United States ex rel. Goodman* v. *Hearn*, 153 F. 2d 186, 189, (C. C. A. 5), writ of certiorari dismissed pursuant to stipulation, a selective service classification is not void merely because a registrant may not have known the identity of the members of the panel. That information is available to any registrant who takes the pains to request it.

ARGUMENT

CONSIDERATION BY THE CLASSIFYING BOARDS OF THE RECOMMENDATIONS OF THE ADVISORY PANEL ON THEOLOGICAL CLASSIFICATIONS FURNISHES NO BASIS FOR INVALIDATING RESPONDENTS' SELECTIVE SERVICE CLASSIFICATIONS

These cases present for determination the questions (1) whether there is legal foundation for the establishment in New York City of an advisory panel on theological classifications, and (2) if so, whether it was proper for the classifying boards to consider the recommendations of the panel that respondents' claims to classification in IV-D should be rejected. Basically, the issue is one of reconciling the power lodged in the local boards by Section 10(a) (2) of the Act, *infra*, pp. 50–51, to hear and determine, "under rules and regulations prescribed by the President," all claims for exemption from military service and the power which, as we shall show, is lodged in the City Director of Selective Service to supervise the work of the local boards, to intervene wherever it appears that a local board's action requires further consideration, and to make available to the boards pertinent information relating to their registrants. Without independently discussing the issue presented by these cases, the court below adopted the decision of the Circuit Court of Appeals for the Second Circuit in *United States ex rel. Levy* v. *Cain*, 149 F. 2d 338, where it was held that a board's consideration of the panel's recommendation vitiated the classifica-

tion given the registrant, because it did not appear that the panel's inquiry was limited to "ecclesiastical questions" and that the identity of the members of the panel had been disclosed to the registrant. The result of the decision of the court below and of the court in the *Levy* case is that the classification of every registrant whose case was considered by the panel before April 30, 1945, the date of the *Levy* decision, is vulnerable, for the practice followed in these cases was routine.

In our view, so long as the advisory panel limits its inquiry to whether the registrant's claim to classification in IV–D is sound and so long as the advisory nature of its recommendation is made clear to the classifying boards, there is no basis for judicially invalidating a classification, absent a showing that the final classifying board did not exercise an independent judgment in classifying the registrant. The identity of the members of the panel was not concealed from respondents, who appeared before the panel and could have asked for the names of the sitting members if they desired this information. Information in this respect would have been readily available to them if they had sought it.

1. *The background of the Advisory Panel on Theological Classifications.*—In New York City, where the panel operates, the City Director possesses the same status as the State Director of Selective Service in the various states (see Regs.

603.11–603.12–1, *infra*, pp. 55–56).[10] He is thus responsible for the administration of the Selective Training and Service Act and the Selective Service Regulations in New York City. Among the responsibilities lodged in the City Director by the Selective Service Regulations is the duty to supervise the local and appeal boards in New York City. He possesses authority to review classifications made by local boards and by boards of appeal within his territorial jurisdiction for the purpose of initiating further action in cases where the classifications made by the boards are believed to be improper. Thus, the City Director may require a local board to reopen and consider anew the classification of a registrant (Reg. 626.2 (b), *infra*, pp. 59–60); he may appeal from any determination of a local board to a board of appeal (Reg. 627.1, *infra*, p. 60); he may require a board of appeal to reconsider its decision (Reg. 627.61, *infra*, pp. 62–63); and he may appeal from any determination of a board of appeal to the President (Reg. 628.1, *infra*, pp. 63–64). Quite plainly, the regulations are designed to permit close supervision over the boards. The necessity for this supervision stems from the fact that the boards are comprised of part-time volunteers who are not always experienced in the intricacies of weighing evidence, or in resisting pressure from persons

[10] The State Director for New York has jurisdiction over all of New York State, except New York City.

seeking exemption or deferment from military service, or in resisting occasional pressure from the community to deny such exemption or deferment to registrants entitled to it; and, most important, they are not equipped independently to investigate claims for exemption or deferment from military service.

Because the proceedings before the boards are non-adversary in character and, for the most part, only the evidence adduced by the registrant is available to the board, the City Director maintains a staff which constantly reviews local board files and investigates doubtful claims. It is in the performance of this function that the City Director found it desirable to establish the theological panel. Experience demonstrated that selective service personnel very often had difficulty in properly evaluating claims to classification in IV-D because they were unfamiliar with the educational practices in the various religious groups, and also because many of the religious sects are loosely controlled, with no central authority to determine who are ministers within the sect.

Accordingly, in December 1942 and January 1943, the City Director organized in his office an Advisory Panel on Theological Classifications. The function of the panel is to make recommendations in close cases involving claims for theological exemption which might be used as advisory opinions

by the local boards and which advise the City Director whether action on his part is required, either to take an appeal or to request a local board to reopen a classification. The panel is composed of two sections. The membership of one section consists of prominent laymen and rabbis of the Jewish faith who limit their activities to cases involving registrants who claim to be rabbis or to be students preparing for the ministry in the Jewish religion. A second section is comprised of representative persons from other religious groups who consider similar questions involving other registrants. The members of the panel are volunteers, each of whom has taken an oath of office as required by Section 602.4 of the Selective Service Regulations, *infra*, p. 54. We have set forth in Appendix C, *infra*, pp. 67–73, a list, furnished by the Selective Service System, of the members of the first section of the panel with a brief summary of their qualifications.

In essence, the panel was created to perform, in the field of theological classifications, the same function which the Department of Justice performs in cases of persons claiming classification as conscientious objectors (see Sec. 5 (g), *infra*, pp. 48–49), i. e., to investigate the registrant's claim, interview him, analyze the significant facts pertaining to the claim, and make an advisory recommendation concerning the merits of the claim.

The cases which have come before the panel for recommendation have been cases uncovered by

representatives of the City Director in periodic reviews of local board files and, in some instances, cases where a local board has requested an advisory opinion from the City Director.[11] We are advised by the Selective Service System that of all the cases involving theological claims which have been referred to the City Director or which have come before him for review, approximately 40% were deemed to warrant referral to the theological panel for an advisory recommendation. In the other 60% of the cases, the claims were determined to be so free from doubt as not to require the specialized assistance of the panel. As of December 1945, the section of the panel involved in the present cases had recommended in favor of the registrant's claim to exemption in approximately 65% of the cases.

In practice the panel functions in the manner shown by the records in these cases. If the City

[11] In Bulletin No. 94, issued July 31, 1943, by the City Director, the selective service agencies were advised, as follows:

"Advisory panels of outstanding religious representatives have been established by this Headquarters for the purpose of considering the cases of Ministers of Religion and Theological Students, and submitting advisory recommendations as to their proper classification.

"Local Boards may submit doubtful cases to this Headquarters for advisory opinions by the Panels. This applies not only to future cases but to cases already classified in which there has been some question of doubt. The recommendation of the Panel will be submitted to the Local Board with a transcript of any testimony taken.

"The recommendations of the Panels are purely advisory and are in no way binding upon the Local Boards."

Director determines that a case warrants referral to the panel, the registrant is requested to appear before the panel for a hearing relative to his claim to classification in IV-D. The panel has before it the registrant's selective service file and the registrant is permitted to furnish additional evidence and to explain the basis for his claim to exemption. A stenographic transcript is made of the hearing. The panel prepares its recommendation and together with a transcript of the hearing, the recommendation is transmitted to the City Director. If the Director agrees with the recommendation of the panel, he then directs the local board to reopen the registrant's classification and to consider the information developed at the panel's hearing and the advisory recommendation of the panel. The recommendation of the panel, a statement of the panel's reasons for its recommendation,[12] and a copy of the transcript of the hearing are submitted to the local board for its consideration, and these documents are placed in the registrant's selective service file, where they are available for inspection by the

[12] In the *Levy* case the circuit court of appeals laid great stress on the fact that the local board received only a bare recommendation from the panel, without a statement of facts or reasons for the recommendation (149 F. 2d at p. 341). In the present cases this element is lacking, for the boards received detailed explanations from the panel as to the reasons for its recommendations (*supra*, pp. 8–11, 16–17).

registrant (Reg. 605.32, *infra*, p. 57).[13] In each case the local board is specifically advised that the panel's recommendation is advisory only and that it is the responsibility of the local board to classify the registrant.

Thus, for example, in the *Horowitz* case, No. 58, the facts summarized in the Statement, *supra*, pp. 4–14, show that respondent was classified in IV-D by the local board on November 2, 1941. In April 1944, the City Director undertook a review of Horowitz' file and, as a result, respondent was requested to appear before the theological panel on May 2, 1944. Respondent appeared before the panel and the transcript of the hearing, which is before the Court as an original exhibit, reveals that the panel inquired concerning his family status; his occupation; his education; the nature of his studies for the ministry; his understanding of various basic principles in the religion; and the conflicts in the information which he furnished the local board. Thereafter the City Director requested the local board to reopen respondent's classification and he forwarded to the board a transcript of the hearing and a statement prepared by the panel explaining in detail its reasons for recommending

[13] Thus, it appears from the statement on appeal prepared by respondent Samuels under date of October 23, 1944, which is in his selective service file, that he examined the panel's recommendation and replied to it.

against respondent's claim. All of these documents were placed in respondent's file and after further proceedings before the board Horowitz was ultimately classified I-A. Upon his appeal, all of the information was submitted to the board of appeal, which also classified him I-A.

2. *The advisory panel does not invade the statutory function of the classifying boards.*— Since respondents were finally classified by their boards of appeal, it was their burden on habeas corpus to demonstrate that these boards, not the local boards, departed from the Act or regulations in classifying them. *Bowles* v. *United States,* 319 U. S. 33; *Falbo* v. *United States,* 320 U. S. 549, 555 (concurring opinion). Indisputably it was the function of the boards of appeal, pursuant to the Selective Service Regulations, to determine respondents' claims to exemption from military service. And if the boards abdicated this statutory duty, respondents' classifications are open to attack on habeas corpus.

Our difficulty with the decision of the circuit court of appeals is that nothing in the records before the court demonstrated that the boards of appeal did not fully perform their statutory duty. Respondents adduced no evidence at their habeas corpus hearings showing that the boards of appeal did not consider all the evidence which they submitted, or that the boards acted on any basis other than the evidence before them. Likewise, they made no showing that they were in any

sense denied a fair hearing before the theological panel; or that they were denied the opportunity to challenge the recommendations of the theological panel; or that the panel's recommendations had no foundation in the facts before it; or that they sought to ascertain the identity of the members of the panel and were refused this information; or that the classifying boards considered themselves bound by the recommendations of the panel.

The sole basis for the decision below is the circumstance that the advisory recommendations of the panel were included in the materials which were before the boards of appeal and presumably were considered by the boards. We agree with the Circuit Court of Appeals for the Fifth Circuit (*United States ex rel. Goodman* v. *Hearn*, 153 F. 2d 186, writ of certiorari dismissed pursuant to stipulation) that this fact by itself does not permit the conclusion that the boards of appeal abdicated their statutory function.[14]

[14] Compare *United States ex rel. Trainin* v. *Cain*, 144 F. 2d 944 (C. C. A. 2), certiorari denied, 323 U. S. 795. The registrant in that case contended, in the circuit court of appeals and on petition for a writ of certiorari, that his classification was illegal because the local board considered the recommendation of the advisory panel. The circuit court of appeals flatly rejected the contention, and certiorari was denied. The subsequent decision in the *Levy* case expressly qualifies the decision in the *Trainin* case. See also, *United States ex rel. Isseroff* v. *Cain*, 57 F. Supp. 715 (E. D. N. Y.), *United States ex rel. Steinberg* v. *Graham*, 57 F. Supp. 938 (E. D. Ark.),

A. As we have said, *supra*, p. 26, the theological panel performs the function in the field of theological classifications which the Department of Justice and its Hearing Officers perform in the field of conscientious objector classifications. The safeguards which the City Director adopted in the former instance are patterned after the safeguards which Congress provided in the field of conscientious objector classifications. Thus Section 5 (g) of the Act, *infra*, pp. 48–49, provides that when a registrant who claims exemption from military service as a conscientious objector takes an appeal to his board of appeal the "board shall forthwith refer the matter to the Department of Justice for inquiry and hearing by the Department or the proper agency thereof" and that—

> * * * a hearing shall be held by the Department of Justice with respect to the character and good faith of the objections of the person concerned, and such person shall be notified of the time and place of such hearing. The Department shall, after such hearing, if the objections are found to be sustained, recommend to the appeal board (1) that if the objector is inducted into the land or naval forces under this

United States ex rel. Goodstein v. *Mallon*, 61 F. Supp. 671 (D. Md.), and *United States ex rel. Yaroslawitz* v. *Fales*, 61 F. Supp. 960 (S. D. Fla.), where the courts sustained selective service classifications based in part upon recommendations of the panel. Compare *United States ex rel. Rubin* v. *Magruder*, 55 F. Supp. 947 (D. R. I.).

Act, he shall be assigned to noncombatant service as defined by the President, or (2) that if the objector is found to be conscientiously opposed to participation in such noncombatant service, he shall in lieu of such induction be assigned to work of national importance under civilian direction. If after such hearing the Department finds that his objections are not sustained, it shall recommend to the appeal board that such objections be not sustained. The appeal board shall give consideration to but shall not be bound to follow the recommendation of the Department of Justice together with the record on appeal from the local board in making its decision. * * *

In practice this statutory provision has operated as follows: When a person asserting conscientious objections takes an appeal and the board of appeal determines preliminarily that he is not entitled to deferment or exemption from military service, the board is required to refer his selective service file to the appropriate United States Attorney. The registrant's claim is investigated by the F. B. I., and after its report is made the matter is referred to a Department of Justice Hearing Officer, who conducts a hearing at which the registrant appears and is given the opportunity to adduce evidence, to explain his position and to reply to any adverse evidence which may be developed at the hearing. There-

after, the hearing officer prepares a recommendation concerning the registrant's claim. The recommendation summarizes the facts and states the Hearing Officer's reasons in support of the recommendation. If the recommendation is approved by the Department of Justice, it is forwarded to the appropriate board of appeal which then classifies the registrant.[18]

The parallel between this procedure and the procedure followed in New York City in dealing with theological classifications is for all practical purposes absolute. The theological panel performs the same function as the Department's Hearing Officer.

Particularly significant, in view of the limitation to "ecclesiastical questions" which the *Levy* decision imposed upon the panel, is the fact that, while the subject matter of the inquiry is different, the scope of the inquiry by each is the same. The Hearing Officer considers the information contained in the registrant's selective service file together with the information which the F. B. I. investigation reveals and the information developed at the hearing. On the basis of all the information pertinent to the question whether the registrant should be classified in IV–E, the Hearing Officer prepares a written recommendation for or against classification in IV–E which, when

[18] See Department of Justice Circular No. 3461, issued February 11, 1941, and the various supplements to it which have been issued from time to time.

approved by the Department of Justice, is forwarded to the board of appeal. Likewise the panel considers the information shown by the selective service file and the information which is developed at its hearing and on the basis of all the information which is pertinent to the question whether the registrant should be classified IV–D, it prepares a written recommendation which is ultimately forwarded to the classifying board and is placed in the registrant's file. In both instances the recommendation informs the boards of the facts considered and of the reasons for the recommendation (see *supra*, pp. 8–11, 16–17, 34). Both recommendations are advisory only and the boards are instructed accordingly.[16]

The court below, as well as the Circuit Court of Appeals for the Second Circuit in the *Levy* case, purported to be enforcing the congressional policy manifest in the Act, that classifications shall be made by the local boards or by the appropriate appellate agencies, when it held respondents' classifications invalid. In doing so, however, the court overlooked the procedure

[16] In addition to the general instruction to all selective service boards that "the recommendations of the Panels are purely advisory and are in no way binding upon the Local Boards" (see note 11, *supra*, p. 27), the local boards in both the *Horowitz* and *Samuels* cases were specifically instructed, at the time that the recommendations were submitted to them, that consideration should be given to the recommendation of the advisory panel but that the responsibility for determining the registrant's classification rests with the boards or the appropriate agency of appeal (*supra*, pp. 8, 16–17).

which Congress created in Section 5 (g) for conscientious objectors and upon which the panel procedure is patterned. Quite plainly, when Section 5 (g) and Section 10 (a) (2) are read together, as they must be, it becomes evident that Congress saw no unreasonable interference with the power to classify, which it lodged in the boards, in the fact that the Department of Justice conducted a hearing into the registrant's claim and made an advisory recommendation to the board, which in terms either approved or disapproved classifying the registrant in IV-E. Apart from the fact that the theological panel was created by the City Director rather than directly by Congress, we perceive no basis for distinguishing between the conscientious objector cases and these cases. The advisory recommendations of the theological panel which were made in the instant cases are no more an interference with the classifying function of the local and appeal boards than is the advisory recommendation of the Department of Justice made pursuant to Section 5 (g). Rather than interfering with the statutory duties of the boards, the advisory recommendations complement the boards' activities by making available to them the results of the investigations of the advisory agencies and the considered judgments of persons peculiarly well qualified to inquire into the questions upon which they make recommendations.

The advisory recommendations are helpful not only to the boards. The theological panel also operates to the advantage of the registrant. Because the panel is specially qualified to deal with the complex theological questions involved in many of these cases, it is capable of protecting the interests of registrants having legitimate claims for exemption and at the same time it is peculiarly well qualified to detect unwarranted claims which might appear valid to persons not familiar with the religious group with which the registrant is affiliated. In the present cases the claims of registrants of the Jewish faith were considered by prominent and well qualified members of that faith, whose only motive in performing this task was to assist the Government during a period of emergency.

The fact that Congress provided in detailed terms in Section 5 (g) of the Act for the advisory recommendation of the Department of Justice does not, we think, demonstrate that Congress did not authorize the use of advisory recommendations in other situations. For with the exception of Section 5 (g), which relates to a problem that had proved troublesome in the First World War,[17] Congress did not undertake to spell out the

[17] The detailed provisions of Section 5 (g) embody a compromise plan worked out between representatives of various religious organizations who were concerned with the treatment of conscientious objectors and representatives of the Government, whereby conscientious objector claims would

details of selective service organization and procedure. Instead, Congress provided in Section 10 (a) (2) that the President is authorized "to create and establish a Selective Service System," including local and appeal boards and "such other agencies" as may be necessary to carry out the provisions of the Act, and Congress provided that the President may delegate his authority under the act to the Director of Selective Service and that the latter may delegate any authority delegated to him by the President to such persons as he designates or to persons who are designated pursuant to regulations prescribed by him (sec. 10 (b)). The City Director of New York is such a person (Reg. 603.12–1). In the exercise of the authority delegated to him, the City Director found it necessary, in carrying out the provisions of the act in New York City, to establish a theological panel to assist him in performing the functions vested in him by the Selective Service Regulations and to assist the classifying boards by making available to those boards the same kind of specialized assistance which the Department of Justice makes available to the appeal boards in conscientious objector cases.[18] The City Director's

be insured a hearing before the Department of Justice. See Hearings before the House Committee on Military Affairs on H. R. 10132, 76th Cong., 3d sess., Vol. 1, p. 206.

[18] We have been advised by the Selective Service System that the national office is familiar with the panel's function in New York City and has approved of its work and that the

implicit finding in this respect rests firmly on his experiences in administering the act in New York City. We submit that the advisory panel on theological classifications is plainly within the category of "such other agencies" which Congress authorized in Section 10 (a) (2).

There is nothing novel in the fact that the recommendations of the theological panel are made available to the classifying boards to assist them in performing their statutory functions. For example, during the first World War, District Boards (now called appeal boards) were vested with the function of passing on claims to deferment on occupational grounds. "Industrial advisers" were appointed for each board whose function it was, *inter alia,* to supplement the board's information with "all facts and information in their possession as to the Preference Lists issued by the Priorities Division of the War Industries Board," provided, however, that the Lists "shall not be regarded as binding upon the District Board." See Section 80 of the 1917 Selective Service Regulations (*infra,* pp. 64–66).

During the present period of war and the precedent mobilization, it has been the common prac-

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Director of Selective Service did not formally authorize the creation of the panel, "because it was felt that the divinity student problem in New York City was a problem peculiar to that city which could be handled under the administrative jurisdiction of the Director of Selective Service for New York City."

tice for the boards to consider advisory recommendations in dealing with problems of classification. In determining whether a registrant should be deferred as an essential farm worker the boards have considered the advisory recommendations of the County War Boards established by the Department of Agriculture.[19] Advisory recommendations from the Procurement and Assignment Service of the Federal Security Agency have been considered in classifying doctors of medicine, dentists, veterinarians, and sanitary engineers.[20] State Director Advice No. 205, issued May 22, 1943, authorized the State Directors of Selective Service to accept the advisory assistance of Pharmacy Advisory Committees in dealing with the classification of pharmacists and students of pharmacy. Local Board Memorandum 115–M, issued November 26, 1945, and amended January 2, 1946, recognizes the Office of Scientific Research and Development as a certifying agency with respect to the classification of certain students, teachers and research workers in the physical sciences. We are advised by the Selective Service System that numerous other advisory committees have been infor-

[19] See Local Board Memorandum No. 164, issued November 17, 1942, as amended April 5, 1944. This practice has been considered and approved by the Circuit Court of Appeals for the Ninth Circuit. *Cramer* v. *France*, 148 F. 2d 801; *Sullivan* v. *Swatzka*, 148 F. 2d 965, certiorari denied, 326 U. S. 752.

[20] See State Director Advice No. 271, issued June 8, 1944.

mally approved as advisory and informational sources for the classifying boards. And, in many instances, as in *Horowitz'* case (*supra*, p. 11), the classifying boards have on their own initiative invited advisory recommendations from persons in the community who are specially qualified to assist the boards.

Neither the Selective Training and Service Act nor the Selective Service Regulations limit the sources from which the classifying boards may receive information bearing on a registrant's classification.[21] So long as the information is relevant to the inquiry and is placed in the file, where the registrant may examine it and reply to it, we think it immaterial whether the information comes from the registrant, his neighbors, selective service investigators or, as in these cases,

[21] Section 621.7 of the Regulations provides:

"(a) The local board is authorized to request and receive information from local welfare and governmental agencies where such information will assist it in determining the proper classification of a registrant.

"(b) The local board is authorized to request the State Director of Selective Service to secure information from State or National welfare and governmental agencies where such information will assist it in determining the proper classification of a registrant."

In our view, this provision authorizes the local boards to seek additional information from the agencies mentioned; it does not foreclose a board from receiving information from any source. In any event, as we have shown, *supra*, pp. 37–39, the theological panel is an agency created under the Selective Training and Service Act and is thus a governmental agency within the meaning of Section 621.7.

from an expert advisory body established within the Selective Service System.

In short, we think that the theological panel was properly created under Section 10 (a) (2) of the Act pursuant to the power delegated to the City Director; and that, as in the conscientious objector cases where the Department inquires into the question whether a registrant should be classified IV–E, the panel properly is permitted to conduct a hearing and to make a recommendation on the ultimate question whether the registrant should be classified IV–D.

B. As we have shown in the Statement, each respondent appeared before the Theological Panel and was interrogated by members of the panel. Notwithstanding this fact, respondents have suggested (Br. Opp. 9–11) that their classifications are invalid because they were not apprised of the identity of the members of the panel before whom they appeared. Their argument, relying on the *Levy* decision, 149 F. 2d at p. 341, was that if they had been furnished this information they would have been better able to challenge the competence of the Panel. The difficulty with the argument is that although respondents had ample opportunity to obtain the information, there is no evidence that they sought this information and were denied it by the Selective Service System, or that they sought to challenge the Panel's recommendation on any ground resting on the identity of the members of

the Panel. Realistically viewed, their argument was that because the draft officials did not on their own initiative undertake to identify the Panel members for respondents the classifications are void. The short answer to this argument is the one which the Circuit Court of Appeals for the Fifth Circuit made in *United States ex rel. Goodman* v. *Hearn*, 153 F. 2d 186, 189, that if inquiry had been made the information would have been forthcoming.

If respondents had desired to challenge the competence of the Panel they had numerous opportunities to secure the information which they now deem so vital. When respondents appeared before the Panel they, of course, met the sitting members of the panel face to face and they could have ascertained the names of these persons merely by asking. They did not do so. Thereafter, respondents had numerous appearances before their local boards, but they at no time inquired of the boards concerning the identity of the persons before whom they appeared. Although it was the City Director's office which invited respondents to appear before the Panel, they directed no inquiry to that office concerning the identity of the persons in question.

Respondents' situation is no different from that of a lawyer who appears before a circuit court of appeals. In most instances, he does not know which three judges will be on the bench until he appears before the court for argument. At the argument the

judges are not formally identified for counsel. Instead, the burden is on counsel to make inquiry if he desires information concerning the sitting judges. Similarly, it is not the practice for members of a local board to identify themselves to every registrant who comes before them. Nor does a board of appeal specify the name of every board member when its decision is submitted to the local board. And on appeal to the President the identity of the members of the Presidential Appeal Board which makes a recommendation to the Director of Selective Service in each case, is not formally announced. Instead, the membership of these boards is an item of public information which is available to anyone who makes inquiry.

Thus, for example, it appears from the selective service file in *Gibson* v. *United States*, No. 23, this Term, that Gibson desired the names of the members of his local board for use in his criminal trial. As would be expected, to secure this information he requested the board to furnish to him a list of the local board members, a list which he duly received. Similarly, in these cases, if respondents were disposed to challenge the participation of any member of the panel in the hearing of their cases—assuming that there could be a basis for challenge—they need only have inquired of the City Director's office and the same information which we have printed in Appendix C, *infra*, pp. 67–73, would have been made available to them.

It is clear from what has been said that there is nothing secret about the panel. Indeed, an administrative purpose to conceal the identity of its members, which is what respondents seemed to argue, is hardly compatible with the plain purpose of the panel. While the panel's place in the Selective Service System is that of an expert advisory body, the selection of persons for membership on the panel quite obviously was based on more than their technical knowledge of the questions involved. Prominent rabbis, judges and educators were named to the panel because, in addition to their special competence, they are persons who are well known to the people in the locality where the panel operates, so that there is more likelihood that their judgments will be accepted by the community as judgments based on the merits of each case without regard to extraneous influences and pressures.[22] If secrecy were the motive of the City Director and technical competence were the sole criterion for membership on the panel, relatively unknown religious scholars would, it would seem, have been more likely selections.

[22] We are advised by the Selective Service System that all members serving on the Jewish Section of the panel have received the endorsement of the Synagogue Council of America, a national religious organization which represents the Rabbinical Council of America; the Rabbinical Assembly of America; the Central Conference of American Rabbis; the Union of Orthodox Jewish Congregations of America; the United Synagogue of America; and the Union of American Hebrew Congregations.

Apart from the fact that the panel scheme rests in part upon the community's recognition of the high caliber of its membership, there is little likelihood that the identity of persons as prominent in the religious and public life of New York City as are the members of the panel could be concealed even if such a purpose be assumed. For example, when Goodman appeared before the panel (*United States ex rel. Goodman* v. *Hearn*, 153 F. 2d 186, 189 (C. C. A. 5)) he recognized two members of the panel. See also *United States ex rel. Goodstein* v. *Mallon*, 61 F. Supp. 671, 674 (D. Md.); *United States ex rel. Yaroslawitz* v. *Fales*, 61 F. Supp. 960, 962 (S. D. Fla.). It is not unlikely that numerous other registrants had the same experience.

It is difficult for us to believe that the mere failure of the members of the panel to identify themselves to each registrant as he appeared before them could destroy the vitality of an otherwise valid selective service classification made, as here, by appeal boards having all the evidence before them. Respondents had ample opportunity to gain knowledge of the identity of the members of the panel if they desired that information. Their failure to do so suggests that the point which they now make is a mere afterthought. In any event, we think that, absent a showing that respondents were refused information bearing on the identity of the members of the panel and pertinent to an inquiry into the

competence of those persons to participate in hearing respondents' cases—and no such showing is made here—there is no justifiable basis for invalidating the present classifications.

CONCLUSION

Respondents have failed to show that their classifications were not made in conformity with the Selective Training and Service Act and the Selective Service Regulations. It is plain from Section 5 (g) of the Act that a classifying board does not abdicate its function merely by considering an advisory recommendation as to the propriety of exempting a registrant from military service. Since the court below reached an opposite conclusion while purportedly enforcing the will of Congress, the judgments below should be reversed and respondents remanded to petitioner's custody.

Respectfully submitted.

J. HOWARD MCGRATH,
Solicitor General.
THERON L. CAUDLE,
Assistant Attorney General.
ROBERT S. ERDAHL,
IRVING S. SHAPIRO,
Attorneys.

OCTOBER 1946.

APPENDIX A

The Selective Training and Service Act of 1940, as amended (54 Stat. 885, 50 U. S. C. App. 301, et seq.) provides in part as follows:

> SEC. 5. * * * (d) Regular or duly ordained ministers of religion, and students who are preparing for the ministry in theological or divinity schools recognized as such for more than one year prior to the date of enactment of this Act, shall be exempt from training and service (but not from registration) under this Act.
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> * * * * *
>
> (g) Nothing contained in this Act shall be construed to require any person to be subject to combatant training and service in the land or naval forces of the United States who, by reason of religious training and belief, is conscientiously opposed to participation in war in any form. Any such person claiming such exemption from combatant training and service because of such conscientious objections whose claim is sustained by the local board shall, if he is inducted into the land or naval forces under this Act, be assigned to noncombatant service as defined by the President, or shall, if he is found to be conscientiously opposed to participation in such noncombatant service, in lieu of such induction, be assigned to work of national importance under civilian direction. Any such person claiming such exemption from combatant training and service because

of such conscientious objections shall, if such claim is not sustained by the local board, be entitled to an appeal to the appropriate appeal board provided for in section 10 (a) (2). Upon the filing of such appeal with the appeal board, the appeal board shall forthwith refer the matter to the Department of Justice for inquiry and hearing by the Department or the proper agency thereof. After appropriate inquiry by such agency, a hearing shall be held by the Department of Justice with respect to the character and good faith of the objections of the person concerned, and such person shall be notified of the time and place of such hearing. The Department shall, after such hearing, if the objections are found to be sustained, recommend to the appeal board (1) that if the objector is inducted into the land or naval forces under this Act, he shall be assigned to noncombatant service as defined by the President, or (2) that if the objector is found to be conscientiously opposed to participation in such noncombatant service, he shall in lieu of such induction be assigned to work of national importance under civilian direction. If after such hearing the Department finds that his objections are not sustained, it shall recommend to the appeal board that such objections be not sustained. The appeal board shall give consideration to but shall not be bound to follow the recommendation of the Department of Justice together with the record on appeal from the local board in making its decision. Each person whose claim for exemption from combatant training and service because of conscientious objections is sustained shall

be listed by the local board on a register of conscientious objectors.

* * * * *

SEC. 10. (a) The President is authorized—

(1) to prescribe the necessary rules and regulations to carry out the provisions of this Act;

(2) to create and establish a Selective Service System, and shall provide for the classification of registrants and of persons who volunteer for induction under this Act on the basis of availability for training and service, and shall establish within the Selective Service System civilian local boards, civilian appeal boards, and such other agencies, including agencies of appeal, as may be necessary to carry out the provisions of this Act. There shall be created one or more local boards in each county or political subdivision corresponding thereto of each State, Territory, and the District of Columbia. Each local board shall consist of three or more members to be appointed by the President, from recommendations made by the respective Governors or comparable executive officials. No member of any such local board shall be a member of the land or naval forces of the United States, but each member of any such local board shall be a civilian who is a citizen of the United States residing in the county or political subdivision corresponding thereto in which such local board has jurisdiction under rules and regulations prescribed by the President. Such local boards, under rules and regulations prescribed by the President, shall have power within their respective jurisdictions to hear and determine, subject to the right of ap-

peal to the appeal boards herein authorized all questions or claims with respect to inclusion for, or exemption or deferment from, training and service under this Act of all individuals within the jurisdiction of such local boards. The decisions of such local boards shall be final except where an appeal is authorized and is taken in accordance with such rules and regulations as the President may prescribe. Appeal boards within the Selective Service System shall be composed of civilians who are citizens of the United States. The decision of such appeal boards shall be final in cases before them on appeal unless modified or changed by the President as provided in the last sentence of section 5 (l) of this Act. No person who is an officer, member, agent, or employee of the Selective Service System, or of any such local or appeal board or other agency, shall be excepted from registration, or deferred from training and service, as provided for in this Act, by reason of his status as such officer, member, agent, or employee;

(3) to appoint, by and with the advice and consent of the Senate, and fix the compensation of at a rate not in excess of $10,000 per annum, a Director of Selective Service who shall be directly responsible to him and to appoint and fix the compensation of such other officers, agents, and employees as he may deem necessary to carry out the provisions of this Act: *Provided*, That any officer on the active or retired list of the Army, Navy, Marine Corps, or Coast Guard, or of any reserve component thereof or any officer or employee of any department or agency of the United States who may be assigned or

detailed to any office or position to carry out the provisions of this Act (except to offices or positions on local boards or appeal boards established or created pursuant to section 10 (a) (2)) may serve in and perform the functions of such office or position without loss of or prejudice to his status as such officer in the Army, Navy, Marine Corps, or Coast Guard or reserve component thereof, or as such officer or employee in any department or agency of the United States: *Provided further,* That any person so appointed, assigned, or detailed to a position the compensation in respect of which is at a rate in excess of $5,000 per annum shall be appointed, assigned, or detailed by and with the advice and consent of the Senate: *Provided further,* That the President may appoint necessary clerical and stenographic employees for local boards and fix their compensation without regard to the Classification Act of 1923, as amended;

(4) to utilize the services of any or all departments and any and all officers or agents of the United States and to accept the services of all officers and agents of the several States, Territories, and the District of Columbia and subdivisions thereof in the execution of this Act;

* * * * *

(b) The President is authorized to delegate to the Director of Selective Service only, any authority vested in him under this Act (except section 9). The Director of Selective Service may delegate and provide for the delegation of any authority so delegated to him by the President and any other authority vested in him under this

Act, to such officers, agents, or persons as he may designate or appoint for such purpose or as may be designated or appointed for such purpose pursuant to such rules and regulations as he may prescribe.

(c) In the administration of this Act voluntary services may be accepted. * * *

* * * * *

APPENDIX B

PERTINENT SELECTIVE SERVICE REGULATIONS

602.2 *Voluntary services.*—Voluntary services in the administration of the selective service law may be accepted and should be encouraged. (6 F. R. 6826.)

* * * * *

602.4 *Oath of Office and Waiver of Pay or Compensation* (Form 21).—(a) Every person who undertakes to render voluntary uncompensated service in the administration of the selective service law shall, before he enters upon his duties, execute an Oath of Office and Waiver of Pay or Compensation (Form 21).

(b) Every person who undertakes to render compensated service in the administration of the selective service law shall, before he enters upon his duties, execute the Oath of Office portion of Form 21, but shall not execute the Waiver of Pay or Compensation portion of Form 21.

(c) When executed in the manner herebefore provided, the Oath of Office and Waiver of Pay or Compensation (Form 21) shall be sent to the State Director of Selective Service for filing. (6 F. R. 6826.)

* * * * *

603.1 *Director of Selective Service.*—The Director of Selective Service is responsible directly to the President. He is hereby charged with the administration of the selective service law and is hereby authorized and directed:

(a) To prescribe such amendments to these regulations as he shall deem necessary.

(b) To issue such public notices, orders, and instructions as shall be necessary to the efficient administration of the selective service law.

(c) To obligate funds appropriated for the administration of the selective service law.

(d) To appoint such officers, employees, assistants, and deputies whose salary is $5,000 per annum or less, as shall be necessary to the efficient administration of the selective service law.

(e) To perform such other duties as shall be required of him under the selective service law.

(f) To delegate any of his functions and powers to such officers, agents, or persons as he may designate. (6 F. R. 6827.)

* * * * *

603.11 *Governor.*—The Governor of each State shall have charge of the administration of the selective service law in his State. The office by means of which he performs his selective service functions shall be called "State Headquarters for Selective Service." State Headquarters for Selective Service shall be an office of record for selective service operations only; all selective service records and no other records shall be maintained in this office. For the operation of State Headquarters for Selective Service any necessary expense, including the hire of clerical personnel, shall be paid for by the Federal Government as provided in these regulations. (6 F. R. 6827.)

603.12 *State Director of Selective Service.*—The Governor of each State is authorized to recommend for appointment an

official to whom he may delegate his administrative functions relating to selective service. This official, if so recommended and appointed, shall be called the "State Director of Selective Service" and shall be in immediate charge of State Headquarters for Selective Service. (6 F. R. 6827.)

603.12–1 *Director of Selective Service for New York City may be appointed.*—Subject to the approval of the Director of Selective Service, the Governor of New York is authorized to recommend for appointment a second official to whom he may delegate his administrative functions relating to all selective service matters within the city of New York. This second official, hereinafter referred to as the "City Director," if so recommended and appointed, shall have jurisdiction in all selective service matters within the city of New York and in connection therewith shall have all the functions, duties, powers, and responsibilities of a State Director of Selective Service. If and when the City Director is appointed, the State Director of Selective Service for New York shall be relieved from his responsibilities and his functions, duties, and powers with reference to selective service matters within the city of New York: *Provided, however,* That the City Director shall continue to be subject to such supervision of the State Director of Selective Service as the Governor of New York shall direct, but not otherwise. (8 F. R. 3514.)

* * * * *

604.51 *Appointment and tenure.*—Subject to instructions given and limitations imposed by the Director of Selective Service, the State Director of Selective Service

shall appoint employees for his State Headquarters for Selective Service. (8 F. R. 11126.)

* * * * *

605.32 *Information not confidential as to certain persons.*—No information in a registrant's file shall be confidential as to the persons designated in this section, and any information may be disclosed or furnished to or examined by such persons, namely:

(a) The registrant, or other person having written authority from the registrant.

(b) All personnel of the Selective Service System while engaged in the administration of the Selective Training and Service Act of 1940, as amended.

(c) United States Attorneys and their duly authorized representatives, including agents of the Federal Bureau of Investigation.

(d) Any other agency, official or employee, or class or group of officials or employees, of the United States or any State or subdivision thereof, but only when and to the extent specifically authorized in writing by the State Director of Selective Service or the Director of Selective Service. (9 F. R. 9190.)

605.32–1 *Forwarding registrant's file to State Director of Selective Service.*—A local board, on written request of the State Director of Selective Service of the State in which such local board is located shall forward to such State Director of Selective Service the complete original file of any registrant under the jurisdiction of such local board. (9 F. R. 5472.)

* * * * *

621.7 *Securing information from welfare and governmental agencies.*—(a) The local board is authorized to request and receive information from local welfare and governmental agencies where such information will assist it in determining the proper classification of a registrant.

(b) The local board is authorized to request the State Director of Selective Service to secure information from State or National welfare and governmental agencies where such information will assist it in determining the proper classification of a registrant. (6 F. R. 6606.)

* * * * *

622.44 Class IV–D: *Minister of religion or divinity student.*—(a) In Class IV–D shall be placed any registrant: * * *

(3) who is a student preparing for the ministry in a theological or divinity school which has been recognized as such for more than one year prior to the date of enactment of the Selective Training and Service Act of 1940 (September 16, 1940), * * *. (9 F. R. 5202.)

* * * * *

623.1 *General principles of classification.* * * * (b) It is the local board's responsibility to decide in the first instance the class in which each registrant shall be placed. (6 F. R. 6611.)

* * * * *

623.2 *Information considered for classification.*—The registrant's classification shall be made solely on the basis of the Selective Service Questionnaire (Form 40), Affidavit of Dependent over 18 years of age (Form 40 A), Affidavit—Occupational Classification (Form 42), or Affidavit—Occu-

pational Classification (Form 42 A), and such other written information as may be contained in his file * * *. (9 F. R. 437.)

* * * * * *

626.1 *Classification not permanent.*— (a) No classification is permanent. * * * (6 F. R. 6844.)

* * * * * *

626.2 *When registrant's classification may be reopened and considered anew.*— (a) The local board may reopen and consider anew the classification of a registrant (1) upon the written request of the registrant, the government appeal agent, any person who claims to be a dependent of the registrant, or any interested party in a case involving occupational deferment, if such request is accompanied by written information presenting facts not considered when the registrant was classified which, if true, would justify a change in the registrant's classification; or (2) upon its own motion if such action is based upon facts not considered when the registrant was classified which, if true, would justify a change in the registrant's classification; *Provided*, in either event, the classification of a registrant shall not be reopened after the local board has mailed to such registrant an Order to Report for Induction (Form 150) or an Order to Report for Work of National Importance (Form 50) unless the local board first specifically finds there has been a change in the registrant's status resulting from circumstances over which the registrant had no control.

(b) At any time before the induction of a registrant, the local board shall reopen

and consider anew such registrant's classification upon the written request of the State Director of Selective Service or the Director of Selective Service; *Provided,* That after a registrant has left the local board for delivery pursuant to an Order to Report for Work of National Importance (Form 50) the local board shall reopen and consider anew the classification of such registrant only upon the written request of the Director of Selective Service. (9 F. R. 11619.)

* * * * *

627.1 *Appeal by Director and State Director.* (a) Either the Director of Selective Service or the State Director of Selective Service as to local boards in his State, may appeal from any determination of a local board.

(b) Either the State Director of Selective Service or the Director of Selective Service may take such an appeal at any time. (6 F. R. 6845; 8 F. R. 16720; 10 F. R. 9210.)

* * * * *

627.24 *Review by board of appeal.* * * * (b) In reviewing the appeal, the appeal board shall not receive or consider any information which is not contained in the record received from the local board except (1) the advisory recommendation from the Department of Justice under section 627.25, and (2) general information concerning economic, industrial, and social conditions. (9 F. R. 1415.)

627.25 *Special provisions where appeal involves claim that registrant is a conscientious objector.*—(a) If an appeal involves the question of whether or not a registrant is entitled to be sustained in his claim that

he is a conscientious objector, the board of appeal shall take the following action:

(1) First determine whether the registrant should be classified in one of the classes set forth in section 623.21 in the order set forth except Class IV–F for physical or mental disability and, if it so determines, it shall place the registrant in such class; or

(2) If it determines that the registrant should not be classified in one of the classes set forth in section 623.21 and the registrant has claimed classification in Class IV–E, determine whether to place the registrant in such class and, if it so determines, it shall place the registrant in Class IV–E; or

(3) If it determines that the registrant should not be classified in one of the classes set forth in section 623.21 and the registrant has not claimed classification in Class IV–E but has claimed classification in Class I–A–O), determine whether to place the registrant in such class and, if it so determines, it shall place the registrant in Class I–A–O; or

(4) If it determines not to place such registrant in one of the classes set forth in section 623.21 or in Class IV–E or in Class I–A–O under the circumstances set forth in subparagraphs (1), (2), or (3) above, it shall transmit the entire file to the United States Attorney for the judicial district in which is located the office of the board of appeal for the purpose of securing an advisory recommendation from the Department of Justice.

No registrant's file shall be forwarded to the United States Attorney by any board of appeal, and any file so forwarded shall be returned, unless in the "Minutes of

Other Actions" on the Selective Service Questionnaire (Form 40) the record shows and the letter of transmittal states that the board of appeal reviewed the file and determined that the registrant should not be classified in one of the classes set forth in section 623.21 (except Class IV–F for physical or mental disability) or in Class IV–E or Class I–A–O under the circumstances set forth in subparagraphs (1), (2), or (3) above.

(b) The Department of Justice shall thereupon make an inquiry and hold a hearing on the character and good faith of the conscientious objections of the registrant. The registrant shall be notified of the time and place of such hearing and shall have an opportunity to be heard. If the objections of the registrant are found to be sustained, the Department of Justice shall recommend to the board of appeal (1) that if the registrant is inducted into the land or naval forces, he shall be assigned to noncombatant service, or (2) that if the registrant is found to be conscientiously opposed to participation in such noncombatant service, he shall be assigned to work of national importance under civilian direction. If the Department of Justice finds that the objections of the registrant are not sustained, it shall recommend to the board of appeal that such objections be not sustained. (6 F. R. 6846, 8 F. R. 16720.)

* * * * *

627.61 *Reconsideration of board of appeal determination.*—(a) When either the Director of Selective Service or the State Director of Selective Service deems it to be in the national interest or necessary to

avoid an injustice, he may, at any time, request a board of appeal to reconsider any determination made by it, stating his reasons for requesting such reconsideration. Upon receiving such a request a board of appeal will reconsider its determination in any case.

(b) At any time within 10 days after the date when the local board mails to the registrant a Notice of Classification (Form 57), as provided in section 627.31, or at any time before the registrant is mailed an Order to Report for Induction (Form 150), the government appeal agent, if he deems it to be in the national interest or necessary to avoid an injustice, may prepare and place in the registrant's file a recommendation that the State Director of Selective Service either request the board of appeal to reconsider its determination or appeal to the President. The registrant's file shall then be forwarded to the State Director of Selective Service. As soon as the State Director of Selective Service has acted upon the government appeal agent's request, he shall advise the local board and, if he determines neither to request the board of appeal to reconsider its determination nor to appeal to the President, he shall return the file to the local board. (7 F. R. 10520; 8 F. R. 6017.)

628.1 *Who may appeal to the President from any determination of a board of appeal.*—(a) When either the State Director of Selective Service or the Director of Selective Service deems it to be in the national interest or necessary to avoid an injustice, he may appeal to the President from any determination of a board of appeal. He may take such an appeal at any time.

(b) An appeal to the President may be taken by the Director of Selective Service (1) by mailing to the local board through the State Director of Selective Service a written notice of appeal or (2) by placing in the registrant's file a written notice of appeal and through the State Director of Selective Service, advising the local board thereof.

(c) An appeal to the President may be taken by the State Director of Selective Service (1) by mailing to the local board a written notice of appeal and directing the local board to forward the registrant's file to him for transmittal to the Director of Selective Service or (2) by placing in the registrant's file a written notice of appeal and advising the local board thereof. Before he forwards the registrant's file to the Director of Selective Service the State Director of Selective Service shall place in such file a written statement of his reasons for taking such appeal. (7 F. R. 10521.)

Section 80 of the Selective Service Regulations promulgated during the First World War, pursuant to the Selective Draft Act (50 U. S. C. App. 201 *et seq.*) provided, in pertinent part:

SECTION 80. Principles governing classification with respect to engagement in industries, occupations, or employments, including agriculture, found to be necessary to the maintenance of the Military Establishment or the effective operation of the military forces or the maintenance of national interest during the emergency.

District Boards are charged with the duty of selecting the individuals whose engagement in industry, including agriculture, or whose occupations or employments are such

as to require their continued service in civil life rather than in the Army.

In order to provide for the necessary adjustments between the necessities of the Military Establishment and the requirements of the industries, occupations, and employments, including agriculture, found to be necessary to the maintenance of the Military Establishment, the effective operation of the military forces, and the maintenance of the national interest during the emergency, there shall be appointed by each District Board three persons to be known as industrial advisers to the District Board.

One such person for each District Board shall be nominated by the Department of Labor, one by the Department of Agriculture, and one by each District Board, who shall thereupon be appointed by the respective District Boards.

Whenever, in the discretion of the President, more than three such industrial advisers are required by a District Board, the President may call upon the Department of Labor, or the Department of Agriculture, or the District Board to nominate such additional industrial advisers, who shall thereupon be appointed by such District Board.

Such industrial advisers so appointed by each District Board shall not in any sense be members of such District Board, shall have no right to vote at any meetings thereof, and shall have and exercise only the rights, duties, powers, and functions herein specifically given.

Such advisers shall have the right to furnish all pertinent information to the District Board and may attend meetings of

the Board upon request of the Board to which they are attached.

Such advisers may place before the District Board at its meetings, or at such other time as the Board may request, all facts and information in their possession as to the Preference Lists issued by the Priorities Division of the War Industries Board. Such lists shall not be regarded as binding upon the District Board in its conclusions as to whether or not any particular industry, occupation, or employment, including agriculture, is a necessary industry, occupation, or employment within the meaning of the law and regulations, nor shall such lists prevent the District Board from holding as necessary any industry, occupation, or employment, including agriculture, not contained therein. Such Preference Lists and other facts and information in the possession of such advisers will supplement the information in the possession of the District Boards and will also be used to assist the District Boards in dealing with specific cases.

APPENDIX C

PERSONNEL OF THE ADVISORY PANEL ON THEOLOGICAL CLASSIFICATIONS

The records of the Selective Service System reflect the following information concerning the members of the panel who make advisory recommendations in cases involving registrants of the Jewish faith:

Dr. Alexander M. Dushkin. Appointed: December, 1942.

Executive Vice-President of the Jewish Education Committee of New York.

Vice-President of the Hebrew Cultural Federation.

Formerly Professor of Hebrew at the Hebrew University of Jerusalem.

Formerly Supervisor of Jewish Schools for the Palestinian Government.

Hon. William S. Evans. Appointed: February, 1944.

Justice of the City Court of the City of New York.

Member of the Jewish Education Committee of New York.

Member of the B'nai B'rith.

Member of the Federation for the Support of Jewish Philanthropies of New York.

Dr. Louis Finkelstein. Appointed: December, 1942.

President of the Jewish Theological Seminary of America.

Rabbi Herbert S. Goldstein. Appointed: December, 1942.

Rabbi of the West Side Institutional Synagogue.

Honorary President of the Union of Orthodox Jewish Congregations of America.

Professor of Homiletics at the Yeshiva College of the Rabbi Isaac Elchanan Theological Seminary.

President of the Synagogue Council of America.

Member, Army and Navy Committee on Religious Activities of the Jewish Welfare Board.

Hon. Jonah J. Goldstein. Appointed: December, 1942.

Judge of the Court of General Sessions, New York County.

Member of the Board of Directors of the Jewish Education Committee of New York.

Trustee-at-large of the Federation for the Support of Jewish Philanthropies of New York.

Formerly a Member of the Administrative Committee of the Zionist Organization of America.

Rabbi A. M. Heller. Appointed: October, 1944.

Rabbi of the Flatbush Jewish Center.

President of the New York Board of Jewish Ministers.

Member of the Rabbinical Assembly of America.

Past-President of the Brooklyn Jewish Ministers Association.

Rabbi Leo Jung. Appointed: December, 1942.

Rabbi of the West Side Jewish Center.

Chairman of the Executive Committee of the Joint Distribution Committee.

Professor of Ethics at the Yeshiva College of the Rabbi Isaac Elchanan Theological Seminary.

Member, Army and Navy Commitee on Religious Activities of the Jewish Welfare Board.

Editor of the Jewish Library Series.

Rabbi Isaac Landman. Appointed: December, 1944.

Rabbi of the Congregation Beth Elohim.

Editor-in-chief of the Universal Jewish Encyclopedia.

Rabbi Israel H. Levinthal. Appointed: December, 1942.

Rabbi of the Brooklyn Jewish Center.

President of the Brooklyn Jewish Council.

Member of the National Executive of the Zionist Organization of America.

First President of the Brooklyn Jewish Ministers Association.

Hon. Samuel Levy. Appointed: December, 1942.

Chairman of the Board of Directors of the Rabbi Isaac Elchanan Theological Seminary and Yeshiva College.

Director of the Hebrew Free Burial Society.

Member of the Board of Trustees of the Congregation Kehilath Jeshurun.

Mr. Oscar Lewis. Appointed: December, 1942.

Vice-President of the Federation for the Support of Jewish Philanthropies of New York.

Chairman of the Board of the Brooklyn Jewish Community Council.

Trustee of the Hebrew Brooklyn Orphan Asylum.

Hon. Jacob H. Livingston. Appointed: February, 1944.

Justice of the Supreme Court of the State of New York.

Trustee-at-large of the Federation for the Support of Jewish Philanthropies of New York.

Member of the Advisory Board of the Jewish Board of Guardians, Brownsville Division.

Vice-Chairman and Former Chairman of the ORT of Brooklyn.

Rabbi Joseph H. Lookstein. Appointed: December, 1942.

Rabbi of Congregation Kehilath Jeshurun.

Honorary President of the Rabbinical Council of America.

Founder of the Ramaz School.

Member of the Zionist Emergency Committee.

Professor of Homiletics and Jewish Sociology at the Yeshiva College of the Rabbi Isaac Elchanan Theological Seminary.

Rabbi Morris Max. Appointed: July, 1944.

Rabbi of the Manhattan Beach Jewish Center.

Vice-President of the Rabbinical Council of America.

Dr. Samuel Nirenstein. Appointed: February, 1944.

President of the Union of Orthodox Jewish Congregations of America.

Member of the Executive Committee and Director of the Jewish Welfare Board.

Member of the Board of Directors of the Hebrew Teachers' Training School.

Co-Chairman of the National Orthodox Conference for Palestine and Rescue.

Member of the Board of Directors and Chairman of the Constitution Committee of the Rabbi Isaac Elchanan Theological Seminary and Yeshiva College.

Member of the Board of Directors of the Council of Orthodox Jewish Schools.

Hon. Samuel Null. Appointed: December, 1942.

Justice of the Supreme Court of the State of New York.

Member of the Board of Directors of the Jewish Education Committee of New York.

Member of the Zionist Organization of America.

Member of the Executive Committee of the Continuing Conference of the Jewish Theological Seminary of America.

Rabbi Ahron Opher. Appointed: July, 1944.

Rabbi of the Hebrew Tabernacle of Washington Heights.

Assistant to the President of the Synagogue Council of America.

Samuel Rothstein, Esq. Appointed: December, 1944.

President of the United Synagogue of America.

Member of the Administrative Committee of the Zionist Organization of America.

Member of the Executive and Interim Committee of the American Jewish Conference.

Member of the Board of Directors of the National Jewish Welfare Board.

Hon. E. Ivan Rubenstein. Appointed: February, 1944.

Justice of the Supreme Court of the State of New York.

Member of the United Synagogue of America.

Past-President and Member of the Board of Trustees of Temple Beth El.

Member of the Executive Committee of the Continuing Conference of the Jewish Theological Seminary of America.

Mr. Bernard Semel. Appointed: December, 1942.

Impartial Chairman of the Shirt Industry.

Secretary and Member of the Board of Directors of the Jewish Education Committee of New York.

Trustee of the Federation for the Support of Jewish Philanthropies of New York.

Member-at-large of the Board of Directors of the National Jewish Welfare Board.

Member of the American Jewish Committee.

Dr. Elias Solomon. Appointed: December, 1942.

Rabbi of Congregation Shaarezedek.

Honorary President of the United Synagogue of America.

Past-President of the Synagogue Council of America.

Past-President of the New York Board of Jewish Ministers.

Co-founder and Treasurer of the Jewish Braille Institute of America.

Member of the Board of Directors of the Young Men's Hebrew Association.

Hon. Meier Steinbrink. Appointed: October, 1944.

Justice of the Supreme Court of the State of New York.

Past-President and Trustee of Congregation Beth Elohim.

Member of the Federation for the Support of Jewish Philanthropies of New York.

Honorary Trustee of the Brooklyn Hebrew Orphan Asylum.

U. S. GOVERNMENT PRINTING OFFICE: 1945